COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

	)	
Boston Edison Company, Cambridge	)	D.T.E. 03-121
Electric Light Company, and	)	
Commonwealth Electric Company	)	
d/b/a NSTAR Electric	)	

RESPONSIVE COMMENTS OF THE DIVISION OF ENERGY RESOURCES

Pursuant to the Hearing Officer's Order of June 7, 2004, the Division of Energy Resources (DOER) hereby submits its responsive comments to the parties commenting on the proposed Settlement Agreement submitted in the above-referenced docket on June 4, 2004. Comments were filed on June 11, 2004 by the New England Distributed Generation Coalition (NE DGC), The Energy Consortium (TEC), The Attorney General, Massachusetts Electric Company, UNITIL, Western Massachusetts Electric Company, and the Western Massachusetts Industrial Customers Group (WMICG). [1] DOER urges the Department to approve the Settlement as filed and reject the arguments against approval. Contrary to the opposing commenters, the Settlement is based on the record of the case, is just and reasonable and a fair resolution of the issues in the case.

I. THE SETTLEMENT RATES SHOULD REMAIN IN EFFECT ONLY UNTIL THE NEXT FULLY ALLOCATED COST OF SERVICE RATE CASE

The Attorney General has commented that the Department should approve the Agreement only if the rates are temporary and subject to the next fully allocated cost of service rate case. AG Comments at 8. DOER agrees. Nothing in the Settlement preserves the effectiveness of the settled rates to a date certain. Indeed, because of the staleness of

[1] TEC and three members of NE DGC (American DG, Inc. OfficePower, LLC and Tecogen, Inc.) also filed additional comments separate from the primary comments seeking revisions to the settlement should their primary argument for rejection of the Settlement be denied.

the cost of service and allocation data upon which the rates are based, DOER strongly supports making these rates subject to rate case review. It is indisputable that the rates proposed by the Companies were based upon the currently effective rates for the affected rate classes. The record is replete with evidence that these currently effective rates are based on vintage costs of service that have been subject to a series of adjustments that were not based on actual costs or allocation studies. A rate case review for all of the NSTAR Companies is obviously long overdue and DOER urges the Department to initiate such an investigation.

Notwithstanding these infirmities, the settled rates can be found to be just and reasonable based on the record of the proceeding. The currently effective rates have been approved by the Department and must be presumed to be just and reasonable until found to be otherwise. Boston Edison Company, D.T.E. 99-19, page 4 (July 27, 1999). The settled rates are a reduction from those levels and, therefore, by definition just and reasonable. While DOER agrees with the contentions of NE DGC and TEC that the Company should have been required to file a fully allocated cost of service study as a part of its initial submittal to justify the creation of a new rate class and services, the Department, in its discretion, accepted the filing and initiated an investigation. Under the circumstances, while there may be questionable record support for the application of the existing rates to standby service, there is no record support for an alternative calculation of the rates. In essence, the Department really only has two choices here, total rejection of the filed rates or acceptance of the settled rates as a reasonable proxy of what might be appropriate for a class of customer that places equal or less costs on the system.

II. THE SETTLEMENT TARIFF SHOULD NOT INCLUDE PROVISIONS FOR RECOVERY OF TRANSITION COSTS OR TRANSMISSION CHARGES

The Attorney General has requested that the Settlement standby service tariffs be modified to include charges for transition costs and a contract demand transmission charge. AG Comments at 10. DOER disagrees. The removal of these charges from the tariffs is warranted because the customer should only pay these costs based on actual usage. The contract demand charge for the standby tariffs is a reservation of use of the

system not the actual use of the system. Under the supplemental service tariffs the customer will pay its appropriate share of transition costs and transmission charges for the actual usage of the system. In this sense, such customer is not bypassing the system in violation of the Restructuring Act.

Specifically, with respect to the transition charge, DOER does not agree with the Attorney General's interpretation of G.L. c.164, sections 1G (b)(1) and 1G (e). The Restructuring Act in this regard prohibits bypass of the transition charges but it also prohibits the imposition of an exit fee. (See G.L. c.164, section 1G(g).) To impose a transition charge based on the contract demand rather than actual usage would be the equivalent of an exit fee in that the customer would be paying for the ability to reduce its usage of the system. Similarly, the customer should not have to pay for transmission service until it uses the system.

III. RECOVERY OF COSTS ATTRIBUTABLE TO DISCOUNTS AND EXCLUDED CUSTOMER GROUPS SHOULD BE DETERMINED IN THE CONTEXT OF THE NEXT FULLY ALLOCATED RATE CASE.

The Attorney General comments that the discounts and exemptions included in the Settlement have the effect of allowing certain on site generation (OSG) customers to "avoid distribution costs for which the company had deemed them responsible in its original filing." AG Comments at 11. The Attorney General goes on to state that "[T]his causes the costs to be shifted onto other non-OSG customers in the same class." Id. at 11-12. Consequently, the Attorney General requests that the Department find that these costs should not be recoverable from other customers. DOER believes that this request is premature and should not be addressed at this time. Further, it is premised on claims that the parties have agreed to leave unresolved by the terms of the Settlement.

First, there can be no cost shifting at this time from the rate discounts or exemptions since this case was not submitted as a part of a total revenue requirements case. To the extent the discounts and exemptions result in under-recovery of costs by the Company, the Company's shareholders will absorb that under-recovery until the Company seeks and receives approval to recover of those costs. There is no vehicle in this proceeding to shift those costs at this time. When the Company files its next rate

case, the costs cannot be recovered retroactively and any cost shifting can only occur prospectively after a full investigation of a total revenue requirement and cost allocation study.[2] That investigation may conclude that there is no cost shifting, that OSG customers do not impose the costs claimed by the Company in this proceeding or that OSG customers actually convey a benefit to the system, thereby warranting recovery of the so-called shifted costs to all customers not just customers within the class.

We cannot presume to know what the outcome of such an investigation would conclude and it is premature and inappropriate at this time to state categorically what the allocation of costs should be for OSG customers or any other customer class. Indeed, the Attorney General's request goes to the essence of this case in that the primary dispute has been whether and to what extent OSG customers impose costs on the Company and how they should be recovered. Through the Settlement, the parties have agreed not to resolve this issue and leave it for another day when better information is available. In granting the Attorney General's request, the Department would be making a determination based on disputed facts inconsistent with the terms of the Settlement.

In sum, DOER requests that the Department make no determination at this time about the appropriate treatment of cost recovery attributable to so-called exempt customers until it has before it a fully allocated cost of service. To make any ruling at this time would be unsupported by the record and premature.

IV. THE SETTLEMENT AGREEMENT SUPPORTS THE POLICY GOALS OF THE COMMONWEALTH.

Contrary to the contentions of NE DGC and TEC, the proposed Settlement very much supports the policy goals of the Commonwealth. NE DGC and TEC are correct in their delineation of the benefits of clean and efficient co-generation and the benefits of distributed generation (DG) generally. Comments at 8-9, Initial Brief at 5-8. DOER does not dispute their characterization of the benefits and goals. The proposed Settlement recognizes the importance of facilitating the development of DG through the modifications of the Availability provisions of the tariffs. Many DG projects installed in

[2] At that time, the rate discounts will essentially disappear since they will be superceded by the new rates submitted as a part of the new rate filing.

the past would not have been subject to the stand-by tariffs proposed as part of this Settlement. Assuming that the development of DG will continue in a similar vein, the proposed Settlement will allow the continued unfettered growth of these exempt types and sized DG projects. Further, the Availability provisions include renewable projects of any size, except as limited for natural gas-fired fuel cells.

The development of new renewable energy projects is critical to the implementation of the Renewable Energy Portfolio Standard (RPS). DOER has unique and exclusive jurisdiction over the implementation of this program. (See G.L. c.25A, section 11F and 225 CMR 14.00 et seq.) To the extent renewable energy credits (RECs) are not available to retail suppliers to meet their statutory obligations under that program, they will have to pay Alternative Compliance Payments (ACP) payments. A shortage of RECs will have the effect of not only requiring suppliers to make ACP payments but will also raise the market price of RECs toward the ACP price level. Retail customers will bear the cost of these increased RPS compliance costs. Consequently, the so-called "horse trades" which NE DGC and TEC suggest are unwarranted and have value only to a certain category of DG customer is flat out wrong and contrary to the facts. The Settlement provisions in this regard have a direct and significant impact in meeting and supporting the goals of the Commonwealth to encourage renewable energy at reasonable cost to consumers.

Further, while DOER agrees with NE DGC's and TEC's statement of the Commonwealth's policy goals related to DG, we do not agree with their implication that these goals should be pursued solely through standby rate policy and without regard to rate impacts on other customers. The Report to the Governor on the August blackout, as quoted by NE DGC and TEC, speaks in terms of eliminating "barriers while protecting the interests of the ratepayers" Exhibit NSTAR-DOER 1-21 at iii-iv. The Massachusetts Climate Protection Plan speaks in terms of encouraging various forms of DG. Exhibit DOER 1-19 Supp., at 25. Nowhere in either of these documents does it say that DG customers should get preferential treatment or should pay less than their fair share of costs. To the extent the Commonwealth wishes to provide economic incentives to these industries, it should be done through other means.

As discussed above, contrary to the Attorney General's position, we do not believe that there should be any declaration about future cost recovery or cost shifting in this proceeding. However, we share the AG's concern about potential impacts on other customers from the servicing of DG customers. There is evidence in this case to suggest that that concern may be unwarranted. But there is inadequate information to conclude that there will be no impact whatsoever. The Settlement strikes an appropriate balance between these competing goals, particularly since the record is inadequate to do otherwise.

V. THE COMPANY SHOULD BE REQUIRED TO PERFORM STUDIES THAT ANALYZE THE IMPACT OF THE ON-SITE GENERATION ON THE DISTRIBUTION SYSTEM

The Attorney General requests that the Company be required to perform studies and begin gathering information on the characteristics of OSG to support a separate rate class and the impact of these customers on the Company's distribution costs. We agree. This information is critical to a determination in any future rate proceeding of the appropriateness of the separate rate class and the calculation of costs attributable to this type of service, particularly if DG customers are to be treated differently from other non-DG customers. The Settlement in no way precludes the elimination of these rates and this rate class as a result of a future rate proceeding where the appropriate cost of service and allocation studies show that DG customers should not be treated differently from non-DG customers.

In addition, DOER would like to see this data gathering process include a pilot program similar to that conducted by Massachusetts Electric Company in Brockton (DOER-NG-1-5). This type of pilot would provide important information on the identification and quantification of benefits from DG on the system. The Company should be required to devise such a pilot study in conjunction with the Attorney General, DOER and other interested parties and file it with the Department by April of next year.[3]

[3] In conversations with the Company, we understand that they will have no objection to this proposal. An example of such a pilot is provided as Attachment 1 to these Responsive Comments.

VI. CONCLUSION

In conclusion, DOER submits that the proposed Settlement should be approved in its entirety without change. The objections of the commenters show nothing more than parties with different perspectives on the strengths of their arguments and predictions of the potential outcome of the case. DOER agrees with many of their claims regarding the appropriateness of the Company's submittal. But the fact that the Settlement is premised on the acceptance of some of those terms does not make the Settlement unjust and unreasonable. The record in this case, while substantial, does not support a calculation of rates different from the proposed rates. The record only supports outright rejection or acceptance of the Company's proposal.[4] The rate discounts are, therefore, a reasonable compromise on a temporary basis.

The fact that some of the commenters suggest additional "improvements" to the Settlement as an alternative to outright rejection belies the sincerity of their claims. They are simply looking for a better deal. DOER agrees with NE DGC and TEC that this case required Herculean effort on the part of all of the active parties and the Department. Comments at 10. We disagree, however, that approval of the Settlement will make this effort worthless. These commenters argue primarily that the entire Company filing be rejected and that service to DG customers remain status quo. That outcome will render the substantial effort in this case for naught all the more. It will do nothing in terms of advancing the thinking of the Department or the parties on the issues raised by the case. This Settlement will advance those goals by providing an opportunity to test the claims and allegations in the case. This opportunity will allow for the development of facts and knowledge to support these allegations on both sides of the debate. Unfortunately, the substantial effort put to this case yielded very little facts, only allegations and suppositions. The facts presented were stale and inclusive of the case.

In sum, the Settlement is a just and reasonable resolution of the case. DOER requests that it be approved.

[4] The rates proposed by NE DGC and TEC in their Initial Brief at 56 are premised in equally stale data as that of the Company's current rates. The so-called marginal cost study is not an embedded cost study but simply adjustments based on indexes used as proxies for updating the 14 year-old embedded study (T. 90:1-24, 91:1-11; DTE-2-25 and AG-1-1: AG-1-1(a) and 1(a) Supp., and AG-1-1(b)).

Respectfully submitted,

For the Massachusetts Division of Energy Resources

By its attorneys:

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Cynthia A. Arcate, Esq.
Deputy Commissioner

Diane A. Langley, Esq.
Deputy General Counsel

Massachusetts Division of Energy Resources
100 Cambridge Street, 10th Floor
Boston, MA 02114
(617) 727-4732

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Attachment 1

The NSTAR Load Response Pilot Program

The NSTAR Companies ("the Companies") will submit to the Department by April 1, 2005 a proposed pilot program, similar to the Massachusetts Electric Load Curtailment Pilot Program ("the MECo Pilot"), which identifies one or more constrained locations on their distribution system. This proposal shall include an opportunity for distributed generation ("DG") to be used to alleviate those constraints and avoid distribution system upgrades in a reliable and economic manner.

The program will include the following components:

1) The program will have the goal of rolling out in time for the 2005 summer peak season.[1]

2) The Company will identify the circuits or substations that could benefit from such a program using the criteria previously recognized by the Department:[2] (a) when load growth projections for the area served from a substation suggest substantial capital investment will be required in the next few years;[3] (b) when the level of anticipated loading of the substation in the near term is such that the capital investment is not required immediately, thus the Pilot Program can be applied at the substation without affecting the reliability of the substation; and (c) when the capacity shortfall is anticipated to occur on only a limited number of peak hours.

3) Applicability shall be identical to the MECo Program: (a) available to those customers served from the designated substations whose monthly billing demand exceeds 100 kilowatts ("kW"); and (b) who are capable of reducing their load by at least 50 kW. Customers with the capability to reduce load by using DG shall be eligible.

4) The Company will seek to enroll the maximum number of customers by notifying all customers who qualify. The Company may turn away interested customers only if a pre-established deadline has expired.[4]

5) The Companies will call on participating customers during specified summer peak conditions. [threshold TBD through talks with the Company]

[1] DOER suggests a start date of June 1, 2005.
[2] See Department Letter Order dated June 18, 2002.
[3] MECo had anticipated the need to invest $200,000 for upgrades to the substation prior to the summer of the program, and an additional $1.2 million within three to six years, if the expected loads were to materialize. Department Order at 2, June 18, 2002.
[4] DOER recommends a deadline of June 1, 2005. Note that the MECo Program reserves the right to limit participation in the Program.

6) Customers shall be permitted to participate in an ISO-NE Load Response Program as well.

7) Customers who have enrolled shall not be charged a penalty if they choose not to participate when load curtailment has been called.

8) The Company will pay the customer a per kW credit for running its DG during specific periods using the Department approved formula for the MECo Pilot Program.[5]

9) The Company will fully fund the costs of the Pilot Program.

10) The Company will report to the Department the following information on an annual basis: (a) the number of customers that participated in the Pilot Program and the amount of potential kW reduction represented by those customers; (b) the number of load curtailment events that were called, and; (c) the number of customers that curtailed load when requested and the kW reduction that were achieved.

[5] The curtailed load would be calculated as the difference between the customer's actual load during each hour of the curtailment event, and the customer's baseline load, as determined by the Companies based on the customer's usage during the previous ten days. The formula for establishing the credit is in the tariff sheets submitted for the 2003 MECo Program.

CERTIFICATE OF SERVICE

I, Diane A. Langley, hereby certify that I served the foregoing Responsive Comments of the Division of Energy Resources to all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rule of Practice and Procedure), this ___ day of June 2004.

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Diane A. Langley